

The Anti-Slavery Bugle.

MARIUS R. ROBINSON, Editor.

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THE BUGLE.

John Freeman—Habeas Corpus.

We have listened to no small amount of discussion since 1850, on the question "does the fugitive slave law supersede the writ of Habeas Corpus?" We could never indulge a doubt of it, but Whigs and Democrats have. The question has at length been raised in the case of John Freeman, at Indianapolis, and at least one judge has decided for the supremacy of the fugitive slave law.

We cannot better present this question than it was done by the following letter from Freeman's counsel to the Editor of the Indiana Free Democrat, from which we also copy the opinion of the court, and a portion of the proceedings in the case. In a previous number of our paper, we erroneously stated that Freeman was discharged. He is imprisoned there, and awaits his final trial, which was deferred nine weeks, to give him opportunity to prepare for his trial.

This U. S. Commissioner must have been a rare man for his post, or he would have obeyed the law and granted a summary trial, instead of so long an adjournment.

The Democrat also contains copies of papers certifying beyond possibility of doubt, the freedom of the man, if he shall be able to verify them.

Here is the letter from Freeman's Counsel:

Mr. Editor:—Our position before Judge Major, among others, was that the prisoner, Freeman, could "controvert the return to the writ of habeas corpus, or allege any new matter in avoidance"—Rev. Stat., 2 vol., p. 195; that the right to "allege new matter," of course, implied the right to hear the evidence; and that the exercise of this right by a State Court is not, in the least, in conflict with the Constitution of the United States, or any act of Congress.

We contended that the Judge could not give to the claimant a certificate of removal of Freeman into slavery, that that could be done only by the U. S. Courts, or their commissioners, upon satisfactory proof; and that, the very moment it appeared that Freeman was a slave, the jurisdiction of the State Judge would cease—he could then only remain him to the custody of the U. S. States' officer.

But we insisted that until fact appeared the presumption was, that he was a free man and that the State Court, or Judge, was fully competent to investigate that fact. It is not to be taken for granted, because Mr. Ellington claims Freeman to be his slave, that he is, therefore, his slave; and until that appears, the State Court, or Judge, is not ousted of jurisdiction.

This view of the case is perfectly consistent with all that is claimed for the fugitive slave law. It was never intended by that law that the United States should reach forth her arm into a free State and seize a free man. She has no more right to touch such a man, than the State Court has to discharge a slave from the custody of his master. The truth is, the whole difficulty is a difficulty of fact, not of law. We admit, that the very moment it is conceded, or appears from proof, that the person arrested is a slave, the jurisdiction of the State Court ceases. And we assert, that the very moment that it is conceded, or appears, that the person arrested is a free man, the jurisdiction of the U. S. Courts, under the fugitive slave law, ceases.

The question then is, Is he a free man or a slave? And we assert, that the State Court is just as competent to try this fact as the U. S. Court. And, as the presumption of all law is, that all are free whose feet tread upon free soil, that it was much more becoming and satisfactory that the State Court should try the question of fact. And to assume the reverse of these plain propositions is to yield the sovereignty of a State to a claim, that has nothing to sustain it but arrogance.

KETCHUM, BARBOUR, & CORNELL.

OPINION OF THE COURT.

My line of duty in this case is perfectly clear and plain. The act of Congress, approved September 18, 1850, called the Fugitive Slave Law, vests in commissioners appointed under the act of Congress, in the U. S., and in judges of the superior courts of territories, the power and authority to carry into effect the provisions of that law. Neither this or any other act of Congress confers such power upon a State court or officer. Nor is there any act of the General Assembly of Indiana which even attempts to vest such power in any of her officers or tribunals.

Under this act of Congress, Commissioner Sullivan issued his warrant for the apprehension of John Freeman, a man of color, upon the alleged ground that he owed service to Pleasant Ellington, for the purpose

of having him taken before the Commissioner, that the right of the claimant to his services might be investigated. While the alleged fugitive was in the Deputy Marshal's hands by virtue of that warrant, and before investigation was had before the Commissioner, Freeman was brought before me on a writ of habeas corpus, to which the Deputy Marshal made his return, alleging that he had him in custody by virtue of said warrant issued by said Commissioner. Freeman answered the return by controverting it—by setting up his freedom, and controverting Ellington's right to claim him as his slave.

Freeman's counsel contends that a judge of the circuit court of Indiana had jurisdiction to go beyond the warrant of the Commissioner, and hear the evidence and inquire whether he owed service to Ellington or not. In other words, that I can substitute myself in the place of Commissioner Sullivan, and proceed to hear the evidence as to whether Freeman was Ellington's slave or not, which I had prevented him from hearing by virtue of this writ of habeas corpus. It is contended that circuit judges possess this power, not by virtue of any act of Congress, but by virtue of any act of the General Assembly of this State, but by virtue of the State sovereignty of Indiana, and her duty and power, as such, to protect her citizens from improper and illegal restraints; and it was compared to the right of the United States, to resist British aggression in impressing our seamen; and 2d. Upon the following clause in the 723d sec. of R. S. of Ia., p. 198, relating to writs of habeas corpus, viz: "The plaintiff may accept to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance."

These positions are untenable for the following reasons:

1. The State of Indiana has surrendered this attribute of her sovereignty, as shown by a portion of the second section of the fourth article of the constitution, namely: "No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

2. The case of Prigg v. The Commonwealth of Pennsylvania, 16, Peters R. S. C. U. S. Rep., p. 539, settles and puts at rest the question of jurisdiction over fugitives from labor, in favor of the exclusive jurisdiction in the United States, and that no State Legislature can control it, and consequently no State officer, unless he is vested with authority, by act of Congress, can exercise any jurisdiction over the question of freedom or slavery. In the case of Wright v. Deacon, 5 S. & R. 63, it was held, that the writ of *habeas corpus* did not lie to try the right of the fugitive to freedom, though on the return of the fugitive to the State from which he fled, his right to freedom might be tried. In relation to the case of Prigg v. The Commonwealth of Pennsylvania, there is the following language in a note to 1 Kent's Com., p. 445: "It was there declared, that the national government, in the absence of all positive provisions to the contrary, was bound through its proper department, legislative, executive or judicial, as the case might require, to carry into effect all the rights and duties imposed upon it by the constitution. Any legislation by Congress, in a case within its jurisdiction, supersedes all State Legislation, and implicitly prohibits it."

"The Constitution and laws of the United States secure the right to the owner to reclaim fugitive slaves against State Legislation." 1 Kent's Com., p. 273, note.

There is another well established principle, which bears on the question under consideration, namely: that no State can control the exercise of any authority under the federal government. 1 Kent's Com. 461.—This question is settled by several decisions of controlling authority. "No State tribunal can interfere with seizures of property made by revenue officers, under the laws of the United States; nor interrupt, by process of *replevin*, *injunction* or otherwise, the exercise of the authority of the federal officers." 1 Kent's Com. 432. If the officer of the United States who seizes, or the court which awards the process to seize, has jurisdiction of the subject matter, then the inquiry into the validity of the seizure belongs exclusively to the federal courts." 1b.

The General Assembly of Indiana, so far from intending to confer power on her officers to interfere by *habeas corpus* with fugitive slaves, by the clause of the *habeas corpus* act above referred to, at sec. 725, on p. 195, 2 R. S., provides as follows: "No court or judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him where the term of commitment has not expired in either of the cases following: 1. Upon process issued by any court or judge of the United States, where the court or judge has exclusive jurisdiction."

The Commissioner, so far as he exercises jurisdiction over fugitive slaves, is a court, and therefore will fall within the express exemption of the Statute. As to the question in hand, it is immaterial whether the Commissioner is a court or not, as I only refer to it to show that the Legislature of Indiana, did not intend by any provision of the *habeas corpus* act, to confer any such power, or discharge him where the term of commitment has not expired in either of the cases following: 1. Upon process issued by any court or judge of the United States, where the court or judge has exclusive jurisdiction. The Commissioner, so far as he exercises jurisdiction over fugitive slaves, is a court, and therefore will fall within the express exemption of the Statute. As to the question in hand, it is immaterial whether the Commissioner is a court or not, as I only refer to it to show that the Legislature of Indiana, did not intend by any provision of the *habeas corpus* act, to confer any such power, or discharge him where the term of commitment has not expired in either of the cases following: 1. Upon process issued by any court or judge of the United States, where the court or judge has exclusive jurisdiction. The Commissioner, so far as he exercises jurisdiction over fugitive slaves, is a court, and therefore will fall within the express exemption of the Statute. As to the question in hand, it is immaterial whether the Commissioner is a court or not, as I only refer to it to show that the Legislature of Indiana, did not intend by any provision of the *habeas corpus* act, to confer any such power, or discharge him where the term of commitment has not expired in either of the cases following: 1. Upon process issued by any court or judge of the United States, where the court or judge has exclusive jurisdiction.

Freeman, whereby he escapes, I should render myself personally responsible to Ellington for his value, provided Freeman was his slave.

I am at a loss to discover what difference it can make to Freeman, to have the question, whether he was a free man or owed service to Ellington, investigated before me rather than before Com. Sullivan. Com. Sullivan will hear the evidence that can be adduced for and against Freeman—I could do no more. I am satisfied that I have not got the slightest shadow of an authority to enter into such an investigation. Com. Sullivan has, and is fully competent to do it, and will, I have no doubt, extend to Freeman, in the investigation, all the latitude that I would, and therefore nothing could be gained by my investigating the subject instead of Com. Sullivan.

The Counsel for Freeman then made an effort to have him discharged, because of alleged disqualification of the Commissioner to hold that office. The State court however overruled that question, and the parties met before Commissioner Sullivan.

Mr. Walpole asked that the fugitive be brought into court.

The Court: The Marshal will produce him.

Whereupon, the Marshal, John L. Robinson, gave direction to a party of his posse to bring Freeman into the court house.

Mr. Liston asked that the cause be continued until next Wednesday, or for two weeks, to enable Ellington to prepare for trial. He had no speech to make, but asked it as a matter of right.

The Court required him to reduce his motion to writing, which he did. The motion, as written out, was that the cause be continued until next Monday two weeks, to enable the claimant to take depositions to establish his claim, according to the acts of Congress in such cases made and provided.

Mr. Ketchum for the prisoner, moved for a rule on Ellington to show cause on next Monday why he should not give security for costs, he being a non-resident of this State. In support of this motion, he read the rule of the circuit court of the U. S. for this circuit, to that effect; and also referred to the law of Congress to enable district and circuit courts to make such rules.

Mr. Walpole said no law of Congress required it; if it did, it would be in violation of the constitution of the U. S. He also alluded to the summary character of the proceedings in such cases as a reason why no such rule should be given; and said that claimant had already paid the Marshal \$50, and was ready to pay costs as fast as they might accrue.

John L. Robinson, Marshal, being called on, said he had received \$50 from Ellington. Mr. Ketchum said, if there were any decision against the rule, he did not desire it. There were, however, important questions to be tried in the case. The Fugitive Slave Law contemplated a fair investigation. This would call for the taking of depositions and large expenditures of money; not only by the claimant, but also by the alleged fugitive. Suppose after the accumulation of heavy costs, this claim should be defeated, and the prisoner released, who shall pay those costs? We have no right to the services of the officers without compensation. They are to be indemnified; or will they release us? We have an unquestionable right to their services, and we ask to be secured against the payment of costs which the claimant compels us to make.

Mr. Liston: To whom would the bond he made payable?

Mr. Ketchum: To Freeman. He is entitled to be made safe. He is forced to make the costs, and if the claim is false, he should have security against him who compelled him to make them.

[Here the claimant under the direction of counsel, pulled out his purse, and emptying out a handful of gold coins, handed a \$10 piece to Mr. Liston, who with great pompously handed it to the commissioner, at the same time saying: "There is the utmost amount you can demand of us; and the costs of others we are ready to pay just as fast as they may accrue. If this claim shall be decided against the claimant, your Honor will fork back \$5 of that." He also said that he would not argue the motion; nor if ruled to give security for costs would the claimant in any event do it.]

Mr. Ketchum: "This display of money and the accompanying remarks are altogether unauthorized and unbecoming in this court." He then entered at large into the probable amount of costs, showing that the prisoner would be under the necessity of going to Virginia and Georgia to procure the evidence of his freedom.

Mr. Liston said: He must insist that the case should be heard in a summary manner. If it is continued from time to time, will it be so heard. This is not a suit—it is a claim under the constitution of the U. S. The Marshal is not acting as an officer; but only as the agent of the slaveholder. No officer is bound to act until paid his fees. The Marshal is already paid. You've got all you can claim. If you decide the fugitive not to be our slave, then you must pay us back FIVE DOLLARS of what we have given you. This is not a suit—it is only a legal demand of our right under the constitution. Any fees made by the defendant, we are not bound to pay. We have paid the Marshal more than he demands—we have paid your Honor all you can demand—we are ready to pay all money legally demanded of us, but if you should grant a rule upon us for security for costs, we will not give it.

Mr. Barbour: Mr. Liston says this is not a trial—not a suit—not a cause. What is a trial, suit or cause, if this be not? Here is a court—here are officers—here are two parties—and here are their attorneys. But it is said that these proceedings are summary; and what is intended by that? Nothing more, certainly, than that there is no jury allowed in these causes. The rule then ap-

plies in this case for security for costs, by the same reason as in any other case.

To strengthen the motion, Mr. Barbour then proceeded to show the nature of the prisoner's defense to the claim of Ellington, and the time and probable costs of obtaining the evidence necessary to sustain the defense. For this purpose, he introduced an affidavit containing substantially a statement of the same facts as those which appear in the pleas filed before the judge of the circuit court. The same papers also accompanied the affidavit as those accompanying the pleas. The affidavit alleged that the prisoner was free in Brunswick county, Virginia, as long ago as 1831; and that from 1832 till 1844, the time when he removed to this State, he was free, and as a free man, resided in Walton county, Georgia. Mr. B. also referred to certain telegraphic dispatches tending to show that the claim of Ellington was false and fraudulent.

At this point Com. Sullivan pushed the \$10 gold coin away from him; and avowed he would not have any fee in the case, let it be decided as it might be.

Mr. Ketchum still insisted on the rule for costs. The case was one that called for security. The prisoner had money to prepare for his defense. He had made some money. He was willing to expend it all up to show that he was free—the last cent should go; and when that little stream was dried up, there were other and larger streams that would be opened to aid him in so worthy a purpose.

Mr. Walpole replied at length. It was admitted that claimant had a right to a continuance; and there is no law to authorize security for costs. The law don't contemplate a trial; for in a trial there is equality of rights between the parties. Here is no equality of right. The claimant may take affidavits instead of depositions; while the fugitive has no right to introduce any evidence to show his freedom. Alludes to the discussions in the U. S. Senate while the law was pending there. The trial of the question of freedom or slavery must be tried, if at all, in the State Courts. He denied the right of the prisoner to ask a continuance; for as he has no right to offer any evidence in the case if he were so prepared, he can have no right to continue the cause to procure evidence which he cannot offer. Nevertheless, he was willing to give the prisoner 30 days to prepare to show that he was free, though he did not believe he was. 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